

### **REMARKS/ARGUMENTS**

Claims 1 and 8 have been amended to overcome the rejections under 35 U.S.C. §112.

Pending claims 1, 2, 4, 6-7, and 33-34 stand rejected under 35 U.S.C. §103(a) over U.S. Patent No. 6,052,600 (Fette) in view of U.S. Patent No. 6,449,493 (Webster) and U.S. Patent No. 6,735,434 (Criss). As to amended claim 1, the Office Action concedes that Fette nowhere teaches or suggests a storage unit with first and second regions, in which the second, protected region includes a configuration application. Instead, the Office Action relies on Webster which discloses a permanent memory including multiple regions, all of which may be protected. However, the combination of Fette and Webster does not teach or suggest a single memory that includes both a protected region (i.e., a second region in which the configuration application is stored) and a first region, into which configuration information may be written during operation. This is so, as Webster discloses that its memory is a permanent memory that is not written to during operation.

In addition, the combination of Fette and Webster with Criss further nowhere teaches or suggests a configuration application executed on the portable device to determine whether configuration of the portable device is desired based upon detection of a problem after an update to the portable device. In this regard, Criss nor the other cited references anywhere teaches or suggests determining via a configuration application executed in the portable device whether configuration is desired based on detection of a problem after an update to the portable device. Instead Criss merely teaches that a software update schedule table is analyzed to determine whether it is time for the mobile terminal to send a request to a host computer. However, such software upgrades are merely done based on a determination made in the host computer. Criss, col. 7, lns. 25-60.

Further, nowhere does Criss teach or suggest determining whether configuration is desired based on detection of a problem after an update. Thus, to the extent that the Office Action contends that "Criss discloses...where the portable terminal has the ability to use the old version when there is a problem with the new version"... (Final Office Action p. 8), this contention is respectfully traversed. Instead, this portion of Criss merely teaches that a current version of software is maintained in the portable device until a complete new version has been successfully downloaded. Criss, col. 14, lns. 58-62. Nowhere does this or any other portion of Criss teach or suggest existence of a problem after a software update has been successfully

performed. For at least this reason, claims 1-4, 6-7 and 33-34 are patentable over the proposed combination.

Dependent claim 7 is further patentable, as nowhere does Criss or the other references teach or suggest determining whether restoration of a portable device to a prior operational state is desired. In this regard, the Office Action refers to Criss. However, as described above the cited portion of Criss nowhere teaches or suggests determining whether restoration to a prior operational state is desired. Instead, as discussed above the relevant portion of Criss is only directed to problems during download, not after an update.

Dependent claim 34 is patentable for the further reason that nowhere do the cited references teach or suggest verifying with a user that configuration is desired prior to the time the request for configuration information is made after a determination is made in the control unit to make the request. Instead, in Criss the selection of software is done wholly pursuant to a user request. Criss, col. 17, lns. 19-45.

Pending claims 8-12 and 36-38 stand rejected under 35 U.S.C. §103(a) over Fette in view of U.S. Patent Application No. 2002/0072359 (Moles). Applicant respectfully traverses the rejection. Amended claim 8 is patentable over this combination as nowhere does Fette disclose determining in the portable device itself if configuration of the device is desired based on detecting a malfunction of the device. Instead, the cited portions of Fette merely teach that a user may request updated configuration information. Such teaching does not disclose determining in the device itself if configuration is desired based on detection of a malfunction. This is especially so, as Fette merely discloses that when a malfunction is detected, its configuring method terminates. *E.g.*, FIG. 3, refs. 316 and 324, cited by the Final Office Action, p. 10. Furthermore, Moles nowhere teaches or suggests detecting a malfunction after a software update to the portable device. Nor do any of the other cited references teach or suggest this claimed subject matter. For at least these reasons, claim 8 and claims 9-12 and 36-38 depending therefrom are patentable.

Pending claims 13-18 stand rejected under 35 U.S.C. §103(a) over Fette in view of Criss. Applicant respectfully traverses the rejection. As to claim 13, the Office Action concedes that Fette nowhere teaches or suggests receiving an indication from a base station that the base station detected a malfunction of a portable device. Instead, the Office Action purports to rely on Criss. However, nowhere does Criss teach or suggest detecting a malfunction of a portable

device at a base station. Instead, Criss merely teaches that a host computer that in turn is connected to a base station may determine whether a mobile device is using an older version of operating software. Criss, col. 7, lns. 24-60. In other words, a server computer, which is a file transfer protocol server, merely receives an identification from the mobile station regarding the current version of operating software of the mobile station. Criss, col. 7, lns. 24-60. This is far removed from any teaching or suggestion of detecting a malfunction in a mobile device –and in any event is not done by a base station. Accordingly, for at least these reasons, pending claims 13-18 are patentable over the proposed combination.

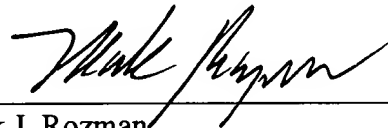
For these same reasons, claims 35 and 39 are patentable over the combination further including Moles. For at least the same reasons, the rejection of claim 40 over Fette in view of Criss, Moles and in further view of Sharma is also overcome.

New claims 41-42 are patentable at least for the same reasons as the claims from which they depend.

In view of these remarks, the application is now in condition for allowance and the Examiner's prompt action in accordance therewith is respectfully requested. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 20-1504.

Respectfully submitted,

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